

1 **ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS**

2 In the Matter of the Unlicensed Activity of:

No. 10F-BD076-SBD

3 **ARIZONA VICTORY, INC. AND**
4 **MICHAEL W. SCHULTZ, PRESIDENT**
5 **AND OWNER**

13401 N. Cave Creek Rd.
Phoenix, AZ 85022-5135

**ORDER TO CEASE AND DESIST;
NOTICE OF OPPORTUNITY FOR
HEARING; CONSENT TO ENTRY OF
ORDER**

6 Respondents.

7
8 The Superintendent of the Arizona Department of Financial Institutions (the
9 "Superintendent"), makes the following Findings of Fact and Conclusions of Law and enters the
10 following Order pursuant to Arizona Revised Statutes ("A.R.S.") § 6-137.

11 Pursuant to Titles 6 and 41 of the Arizona Revised Statutes and Title 20, Chapter 4 of the
12 Arizona Administrative Code ("A.A.C."), Respondents are hereby notified that they are entitled to a
13 hearing to contest the allegations set forth in this Order. The Request for Hearing shall be filed with
14 the Arizona Department of Financial Institutions (the "Department") pursuant to A.R.S. § 6-137(D)
15 within **thirty (30) days** of service of this Order and shall identify with specificity the action or order
16 for which review is sought in accord with A.R.S. § 41-1092.03(B).

17 Pursuant to A.R.S. §§ 41-1092.01(D) and 41-1092.03(B), any person may appear on his or
18 her own behalf or by counsel. If Respondents are represented by counsel, the information required
19 by A.R.S. § 41-1092.03(B) shall be included in the Request for Hearing. Upon the filing of a
20 Request for Hearing, the Department shall issue a Notice of Hearing scheduling the matter for
21 hearing in accordance with A.R.S. § 41-1092.05. **Persons with disabilities may request**
22 **reasonable accommodations such as interpreters, alternative formats, or assistance with**
23 **physical accessibility.** Requests for special accommodations must be made as early as possible to
24 allow time to arrange the accommodations. If accommodations are required, call the Office of
25 Administrative Hearings at (602) 542-9826.

26 Respondents have the right to request an Informal Settlement Conference, pursuant to A.R.S.

1 § 41-1092.06 by filing a written request no later than **twenty (20) days** before the scheduled hearing.
2 The conference will be held within **fifteen (15) days** after receipt of your request. If an Informal
3 Settlement Conference is requested, a person with the authority to act on behalf of the Department
4 will be present (the "Department Representative"). Please note that in requesting an Informal
5 Settlement Conference, Respondents waive any right to object to the participation of the Department
6 Representative in the final administrative decision of this matter, if it is not settled. In addition, any
7 written or oral statement made by Respondents at such informal settlement conference, including
8 written documentation created or expressed solely for purposes of settlement negotiations, are
9 inadmissible in any subsequent administrative hearing. (See A.R.S. § 41-1092.06 for rules regarding
10 informal settlement conferences.) Conversely, any written or oral statement made by Respondents
11 outside an Informal Settlement Conference is not barred from being admitted by the Department in
12 any subsequent hearing.

13 If Respondents do not request a hearing, this Order shall become final. If Respondents
14 request a hearing, the purpose of the hearing shall be to determine if grounds exist for: (1) the
15 issuance of an order pursuant to A.R.S. § 6-137 directing Respondents to cease and desist from the
16 violative conduct and to take the appropriate affirmative actions, within a reasonable period of time
17 prescribed by the Superintendent, to correct the conditions resulting from the unlawful acts,
18 practices, and transactions; (2) the imposition of a civil monetary penalty pursuant to A.R.S.
19 § 6-132; (3) the suspension or revocation of Respondents' license pursuant to A.R.S. § 32-1053; and
20 (4) an order or any other remedy necessary or proper for the enforcement of statutes and rules
21 regulating collection agents pursuant to A.R. S. §§ 6-123 and 6-131.

22 **FINDINGS OF FACT**

23 1. Respondent Arizona Victory, Inc. is not and was not at any time material herein
24 authorized to transact business in Arizona as a motor vehicle dealer within the meaning of A.R.S.
25 §§ 44-281, *et seq.* The nature of Arizona Victory, Inc.'s business is that of a motor vehicle dealer
26 within the meaning of A.R.S. § 44-281(3).

1 2. Respondent Michael W. Schultz ("Mr. Schultz") is the President and Owner of Arizona
2 Victory, Inc. Mr. Schultz is not and was not at any time material herein authorized to transact
3 business in Arizona as a motor vehicle dealer within the meaning of A.R.S. §§ 44-281 *et seq.*

4 3. Neither Arizona Victory, Inc. nor Mr. Schultz is exempt from licensure as a motor
5 vehicle dealer within the meaning of A.R.S. § 44-282(G).

6 4. On April 20, 2009, the Department received a complaint filed against Arizona Victory,
7 Inc. The complainant disputed the fact that he owed money for a motorcycle as it was never
8 financed and never delivered.

9 5. On April 29, 2009, the Department sent Arizona Victory, Inc. a request to provide a
10 response to the complaint, and a listing of sales and finance companies that Arizona Victory, Inc. has
11 sold motor vehicle contracts to in the past 12 months, including ledgers providing the number and
12 dollar amount of all contracts purchased on a buy here/pay here basis.

13 6. On May 11 and May 25, 2009, the Department received faxed responses to the complaint
14 from Mr. Schultz stating that the complainant never received the bike and never paid any money; the
15 final paperwork was never submitted.

16 7. As of June 15, 2009, the Department had not received the documents requested. The
17 Department sent a Subpoena Duces Tecum on June 15, 2009 commanding Arizona Victory, Inc. to
18 produce the following information, set forth below, from March 3, 2006 through June 30, 2009
19 relating to Arizona Victory, Inc. in both hard copy and Excel format for: (1) 1102 N. Anita Ave,
20 Tucson, AZ 85705; and (2) 13401 N. Cave Creek Rd., Phoenix, AZ 85022; and additionally:

- 21 a. A list of all new motor vehicles sold categorized by type, month and year sold;
- 22 b. A list of all used motor vehicles sold categorized by type, month and year sold;
- 23 c. A list of all new and used motor vehicles that were financed on a non-cash basis
24 categorized by type, month, and year, including:
 - 25 i. the total dollar amount financed; and
 - 26 ii. the total purchase price and grand total;

- 1 d. A list of all transactions involving in-house financing, including:
- 2 i. the name, address, and telephone number of all customers; and
- 3 ii. the total amount financed and grand total; and
- 4 e. A list of all transactions involving financing (not in-house), including:
- 5 i. The financial institution's or lender's name and address;
- 6 ii. the name, address, and telephone number of all customers; and
- 7 iii. the total amount financed and grand total.

8 8. On June 18, 2009 the Department received the certified mail receipt delivery signed by

9 M. Schultz.

10 9. On June 22, 2009 Diana Schultz, ("Ms. Schultz") from Arizona Victory, Inc. called and

11 stated that she didn't know they had to have a license since they don't write their own contracts, they

12 just write them for the lender. Ms. Schultz said the company opened in Tucson in 2004.

13 10. On July 2, 2009 Ms. Schultz requested an extension, which was granted.

14 11. On July 29, 2009 information was received from Ms. Schultz that Arizona Victory sold

15 motor vehicles on a non-cash basis as follows:

16

TIME PERIOD	VEHICLES SOLD		AMOUNT FINANCED	
	TUCSON	PHOENIX	TUCSON	PHOENIX
2006	101	3	\$1,731,342.89	\$24,194.57
2007	148	16	\$3,108,490.36	\$295,639.48
2008	103	35	\$1,978,641.53	\$657,970.17
2009 (through 6/31)	11	3	\$186,013.40	\$64,331.66

22

23 **CONCLUSIONS OF LAW**

24 1. Pursuant to Title 6 and Title 44, Chapter 2.1, of the Arizona Revised Statutes, the

25 Superintendent is charged with the duty to regulate all persons engaged in the motor vehicle dealer

26 business and with the enforcement of statutes, rules and regulations relating motor vehicle dealers.

2. The conduct of Arizona Victory, Inc. and Mr. Schultz as alleged above, constitutes engaging in motor vehicle dealer activity in the State of Arizona without having first applied for and obtained a motor vehicle dealer license under Chapter 2.1 of Title 44, in violation of A.R.S. § 44-282(A).

3. Neither Arizona Victory, Inc. nor Mr. Schultz meet any of the exemptions to the licensing requirements set forth in A.R.S. § 44-282(G).

4. The violations set forth above constitute grounds for: (1) the issuance of an order pursuant to A.R.S. § 6-137 directing Respondents to cease and desist from the violative conduct and to take the appropriate affirmative actions, within a reasonable period of time prescribed by the Superintendent, to correct the conditions resulting from the unlawful acts, practices, and transactions; (2) the imposition of a civil monetary penalty pursuant to A.R.S. § 6-132; and (3) an order or any other remedy necessary or proper for the enforcement of statutes and rules regulating collection agencies pursuant to A.R.S. §§ 6-123 and 6-131.

ORDER

1. Arizona Victory, Inc. and Mr. Schultz shall immediately stop all motor vehicle dealer activity in Arizona until such time as Arizona Victory, Inc. or Mr. Schultz has obtained a motor vehicle dealer license from the Superintendent as prescribed by A.R.S. § 44-282.

2. Arizona Victory, Inc. and Mr. Schultz shall pay to the Department a civil money penalty in the amount of **ten thousand dollars (\$10,000.00)**. Arizona Victory, Inc. and Mr. Schultz are jointly and severally liable for payment of the civil money penalty.

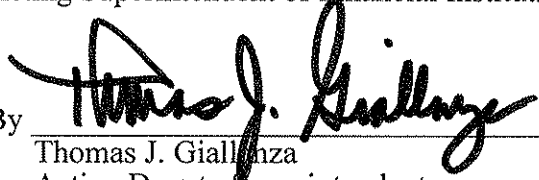
3. The provisions of this Order shall be binding upon Respondents, their employees, agents and other persons participating in the conduct of the affairs of Respondents.

4. This Order shall become effective upon service, and shall remain effective and enforceable until such time as, and except to the extent that, it shall be stayed, modified, terminated or set aside.

• • •

1 SO ORDERED this 16th day of December, 2009.

2 Thomas L. Wood
3 Acting Superintendent of Financial Institutions

4 By 
5 Thomas J. Giallanza
6 Acting Deputy Superintendent

7 **CONSENT TO ENTRY OF ORDER**

8 1. Respondents acknowledge that they have been served with a copy of the foregoing
9 Findings of Fact, Conclusions of Law, and Order in the above-referenced matter, have read the
10 same, are aware of their right to an administrative hearing in this matter, and have waived the same.

11 2. Respondents admit the jurisdiction of the Superintendent and consent to the entry of the
12 foregoing Findings of Fact, Conclusions of Law, and Order.

13 3. Respondents state that no promise of any kind or nature has been made to induce them to
14 consent to the entry of this Order, and that they have done so voluntarily.

15 4. Respondents agree to cease from engaging in the violative conduct set forth above in the
16 Findings of Fact and Conclusions of Law.

17 5. Respondents acknowledge that the acceptance of this Agreement by the Superintendent is
18 solely to settle this matter and does not preclude this Department, any other agency or officer of this
19 state or subdivision thereof from instituting other proceedings as may be appropriate now or in the
20 future.

21 6. Mr. Michael W. Schultz, President and Owner of Arizona Victory, Inc. represents that he
22 is the Owner and as such, has been authorized by Arizona Victory, Inc. to consent to the entry of
23 this Order on its behalf.

24 7. Respondents waive all rights to seek judicial review or otherwise to challenge or contest
25 the validity of this Cease and Desist Order.

26 ...

1 DATED this _____ day of _____, 2009.

2

3

By: _____
Michael W. Schultz, President and Owner
Arizona Victory, Inc.

4

5

6 ORIGINAL of the foregoing filed this 16th day
7 of December, 2009, in the office of:

7

8 Thomas L. Wood
9 Acting Superintendent of Financial Institutions
10 Arizona Department of Financial Institutions
ATTN: Susan Longo
2910 N. 44th Street, Suite 310
Phoenix, AZ 85018

11 COPY mailed same date to:

12 Craig A. Raby
13 Assistant Attorney General
14 Office of the Attorney General
1275 West Washington
Phoenix, AZ 85007

15 Thomas J. Giallanza, Acting Deputy Superintendent
16 Richard Fergus, Licensing Division Manager
17 Roy L. Wiley, Examiner
18 Arizona Department of Financial Institutions
2910 N. 44th Street, Suite 310
Phoenix, AZ 85018

19 Michael W. Schultz, President
20 Arizona Victory, Inc.
13401 N. Cave Creek Rd.
Phoenix, AZ 85022-5135
Respondents

21 Diana Schultz, Statutory Agent For:
22 Arizona Victory, Inc.
1102 N. Anita
23 Tucson, AZ 85705

24 ...

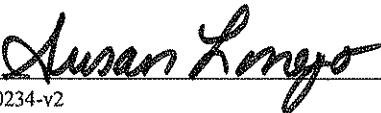
25 ...

26 ...

1 AND COPY MAILED SAME DATE by
2 Certified Mail, Return Receipt Requested, to:

3 Michael W. Schultz, President
4 Arizona Victory, Inc.
5 13401 N. Cave Creek Rd.
6 Phoenix, AZ 85022-5135
7 Respondents

8 Diana Schultz, Statutory Agent For:
9 Arizona Victory, Inc.
10 1102 N. Anita
11 Tucson, AZ 85705

12 
13 _____
14 #640234-v2